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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER
COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by International Alert, a non-governmental
organization in special consultative status

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[17 March 2000]

*/ This written statement is issued, unedited, as received from the
submitting non-governmental organization(s).

1. The mercenary problem: The need for a new approach

International Alert believes that the UN's legal and institutional response to the mercenary problem as it has manifested today is inadequate and something that urgently needs addressing. International legislation aimed at prohibiting mercenary activities is weak and is in any case not applicable to contemporary forms of the phenomenon, such as private security and military companies, which instead require special regulations - currently lacking in most contexts - to ensure the protection of human rights. The mercenary mandate in the Commission on Human Rights takes a narrowly conceived interpretation of the problem and is similarly out-of-date. International Alert recommends that the UN Commission on Human Rights review its approach to the mercenary issue and create a new mechanism which is properly equipped to address the problem.

2. Proliferation of mercenary activity

There is evidence to suggest that mercenary and mercenary-like activities have become more prevalent in conflict situations in recent years. They continue to be a major threat to the protection of human rights in the regions in which they operate. Whilst present in nearly all conflicts, they have been particularly active in armed conflicts in: Afghanistan, Angola, Armenia, Bosnia-Herzegovina, Chechnya, Columbia, Congo-Brazzaville, the Democratic Republic of Congo, Eritrea, Ethiopia, Georgia, Kashmir, Kosovo, Liberia, Papua New Guinea and Sierra Leone. The individuals themselves are from an equally extensive and diverse list of countries from the former-Soviet Union, Europe, the Middle East, the Americas and Africa.

3. Private security services

In addition to a proliferation of mercenary activity there has been an evolution of the mercenarism phenomenon with it taking on new and complex forms. The traditional mercenary - someone who fights for financial gain in armed conflicts alien to their own nationality - has been supplemented in recent years by the emergence of companies beginning to offer security and military services on the international market to governments, corporations and humanitarian agencies. These new manifestations display mercenary characteristics, but also differences, suggesting that they need to be tackled in different and innovative ways. There are now a plethora of non-state armed groups, including traditional mercenaries, volunteer religious and ideological forces, private security and military companies and private militia, which pose common challenges to the state as the principle provider of state security and the protection of human rights. This growing phenomenon has expanded largely unchecked by the UN.

4. Human rights violations

Mercenarism in whatever form undermines the sovereignty of states and the right of peoples to self-determination. Mercenaries may either violate the principle of non-interference or aggravate the development of legitimate security structures which respect the rights of a state's citizens. The threat they pose to the protection of human rights, however, is not restricted to the right of peoples to self-determination. Because international humanitarian

law denies mercenaries prisoner of war and combatant status there is less incentive for mercenaries to abide by humanitarian principles in the conduct of war. There have been numerous reports of mercenaries being implicated in attacks on civilian populations, mass bombings, killings, destruction of villages, summary executions, torture, mutilation and the use of indiscriminate weaponry. Incidences of private security and military companies working for governments violating human rights are less common. However, their links to mining companies and the exploitation of natural resources such as oil and precious minerals can undermine the right to development. International Alert recognises that mercenary and private security activity threatens the protection of human rights under a number of agenda items within the Commission on Human Rights.

5. The response of the United Nations

Since 1968, the UN General Assembly, the Security Council, the Economic and Social Council and the Commission on Human Rights have repeatedly condemned the use of mercenaries as an internationally unlawful act that serves to undermine the exercise of the right of peoples to self-determination and the enjoyment of human rights. By resolution 44/34 of December 4 1989, the UN General Assembly adopted and opened for signature and ratification the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*. To enter into force, the Convention must be ratified by 22 States. To date 19 States have done so with a further 9 having signed, but not yet ratified.¹ In 1987, the UN Commission on Human Rights appointed a Special Rapporteur on the use of mercenaries to examine the adverse effects of mercenary activity, to solicit reliable information from governments and non-governmental organisations, and to encourage the ratification the International Convention. International Alert believes that the legal and institutional response to the phenomenon as it has manifested today is inadequate and something that urgently needs addressing.

6. The legal framework

A prohibition on mercenarism *per se* does not exist in international customary law; only in certain circumscribed instances which undermine the sovereignty and territorial integrity of states. The International Convention has yet to come into force, and is, in any case, replete with gaps and ambiguities. Furthermore, it has been noted by the Special Rapporteur that current international legislation on the use of mercenaries is not applicable to the activities of private security and military companies in most instances. To ensure that the activities of these companies do not contribute to violations of human rights and there is proper accountability for any wrongdoing, special regulations - currently lacking in most contexts - need to be developed. International Alert recommends that the Commission should work towards the prohibition of certain circumscribed mercenary activity whilst at the same time promoting the regulation of the rendering of other security and military services by private bodies due to the unique challenges they present to the protection of human rights.

¹ The following nineteen states have ratified the Convention: Azerbaijan, Barbados, Belarus, Cameroon, Cyprus, Georgia, Italy, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. The following nine states have signed but have yet to ratify the Convention: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania, and Yugoslavia.

7. UN Expert meetings

In view of the inadequacies of the international legal framework on mercenarism, the UN General Assembly (Press Release GA/AB/3350) adopted a resolution last year which recommends *inter alia* that the UN High Commissioner for Human Rights convene expert meetings to study and up-date the international legislation in force and to propose a clear legal definition to allow more effective prevention and punishment of mercenary activities. International Alert recommends a wide-angled approach to these meetings to take into account manifestations of mercenarism in all their forms.

8. The mercenary mandate

The current wording of the resolution which supports the mandate of the Special Rapporteur on the use of mercenaries refers ostensibly to the problem as it was experienced in post-colonial Africa and the precise role played by mercenaries in that era. As a result the issue comes under agenda item 5 of the Commission on 'The right of peoples to self-determination and its application to people's under colonial or alien domination of foreign occupation.' This narrowly conceived interpretation of the problem has severely restricted the utility of the mandate and moreover meant that the contemporary, and arguably more prevalent dimensions of the problem, may not come within its remit. Officially, there is no mechanism within the UN system to study and monitor this new strain of mercenarism to ensure that there is respect for human rights. International Alert recommends that the Commission remedy this deficiency in the UN's response to the mercenary issue by reviewing the current mandate in 2001 and broadening its scope to include private security groups.

9. A new approach

The mercenary and private security issue should not merely be dealt with as a matter of legal definition of the meaning of mercenary and consequent legitimacy within international law, but should also involve a process for dialogue and engagement with private security groups to ensure that there is respect for human rights and an appropriate response to any wrongdoing. International Alert believes that the Commission should work towards the prohibition of certain circumscribed mercenary activity whilst at the same time promoting the regulation of the rendering of other security and military services by private bodies due to the unique challenges they present to the protection of human rights.

10. Co-ordination with other UN bodies

There are currently numerous bodies and agencies in the UN dealing with discrete elements of the mercenary and private security issue. A co-ordinated approach is necessary to ensure an integrated and effective response to this multi-dimensional problem. International Alert believes that such a function would be best served by a new mechanism within the Commission. (International Alert does not think the proposal that the mercenary issue be dealt with in the Sixth Committee of the General Assembly, which appeared in the initial report of the Bureau on Enhancing the Effectiveness of the Mechanisms of the Commission, would be a useful way to proceed. The Sixth Committee is the body of the General Assembly responsible for the formulation and drafting of international legal instruments. Since the UN has already adopted an International Convention against mercenaries, which

has not yet come into force, there is little prospect of tackling the issue in this forum unless a new standard-setting exercise is envisaged. Furthermore, the Sixth Committee would not provide the necessary vehicle to report on the phenomenon and to enter into dialogue with governments and private security companies in ways which could help the promotion and protection of human rights.)

International Alert proposes that a new mechanism be devised by the Commission in 2001 to facilitate greater co-ordination with other UN bodies and agencies including: other Special Rapporteurs in the Commission and Sub-Commission, especially on Terrorism and Human Right because of similar aspects of the problems; the human rights treaty bodies; the Office of the High Commissioner for Human Rights, which should take a more proactive role in tackling the issue; the UN Security Council in view of Secretary General's recent statement on the protection of civilians, and the UN Commission on Crime Prevention and Criminal Justice, with practical reference to its current work on Transnational Organised Crime groups in view of the obvious connections.

11. The new mechanism

International Alert believes the existing mercenary mandate should be transformed into a new mechanism with a wider remit to address both mercenary and private security activity. In addition to promoting adherence and development of the existing legal framework, the mechanism would also provide a means to monitor and control the provision of private security services and conduct of private security companies and their employees so that they adhere to internationally agreed human rights standards. In particular it would:

- provide specialised expertise to study the modern phenomenon of mercenary and private security activity and identify internationally proscribed activities and those that require regulation;
- encourage UN Member States to ratify the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* and once in force consider ways to monitor its implementation;
- recommend new frameworks for the regulation and monitoring of private security services and provide advisory services with regard to national legislation;
- monitor and investigate the activities of private security groups and their involvement in human rights violations and ensure that any state using them does not obfuscate international scrutiny and accountability applicable to national forces;
- enter into dialogue with governments, corporations, humanitarian agencies and other users of private security groups to ensure respect for human rights;
- co-ordinate and liaise with other UN agencies and bodies to act as a focal point for the UN's response to this evolving issue.
